In the High Court of Uttaranchal, at Nainital.

Appeal from Order No. 227 of 2004

1- Shankar Singh Rana, S/o Late Gabbar
Singh Rana,

2- Smt. Kamla Rana W/o Shankar Singh Rana,
Both R/O 6/1, G.M.S. Road, Near
Petrol Pump, Post Kanwali,
District Dehradun …. Appellants.

Versus

1- Regional Manager, Gramin Depot, U.P.
(Now Uttaranchal) State Road Transport Corporation,
Gandhi Road, Dehradun.

2- Sumer Chand S/o Mangat Singh
R/o Mohalla Gaziwala, House No. 190,
Police Station, Civil Lines,
Muzaffar Nagar U.P.
(Bus Driver) …..Respondents.

Sri B.P. Nautiyal, learned counsel for the appellants.

Sri Ashish Joshi, learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.

Hon'ble B.C. Kandpal, J.

Dated: May 8, 2006.

This Appeal from Order under Section 173 of the Motor Vehicles Act, has been filed by the claimants against the judgment

and award dated 23-4-2004, passed by M.A.C.T./Addl. District Judge/V Fast Track Court, Dehradun in M.A.C.P. No. 238/2003, Shankar Singh Rana and another Versus Sumer Chand and another.

2- Brief facts of the case are that the appellants being the parents of the deceased Devendra Rana had filed a claim petition before the M.A.C.T. in lieu of the death of their son, on the ground that Devendra Rana was going on a Motorcycle on 8-5-2003. Gaurav Pant was driving this Motorcycle and Devendra Rana was a pillion rider. As soon as this Motorcycle reached at Chandramani Tiraha, a Roadway Bus No. U.P. 07-J-9446 coming from the side of Saharanpur in a rash and negligent manner, dashed the Motorcycle, due to which the pillion driver, i.e., Devendra Rana sustained grievous injuries on his person. Devendra Rana was admitted in the Hospital and he ultimately succumbed to his injuries on 14.5.2003. The deceased Devendra Rana was aged about 20 years at the time of the accident and the claimants have disclosed his monthly income as Rs. 3,000/- from giving tuitions and doing private job. The claimants have therefore claimed an amount of Rs. 10,25,000/- as compensation in lieu of the death of Devendra Rana.

3- The claimants have not arrayed either the driver, owner or the insurer of the Motorcycle as opposite parties in the claim petition. The driver of the bus (offending vehicle) has been arrayed as opposite party No.1 and the Regional Manager, Roadways has been arrayed as opposite party No.2. Both the opposite parties filed their written statement before the Tribunal. The opposite parties have pleaded in their written statement that the claim petition is liable to be dismissed on account of non-joinder of parties. It has also been pleaded that Gaurav Pant, who was driving the Motorcycle at the time of the accident was not having the valid driving licence. It is also pleaded that the accident took place on account of the rash and negligence of the driver of Motorcycle.

4- On the basis of the pleadings adduced by the parties, the Tribunal framed the relevant issues. Thereafter the parties adduced their evidence before the Tribunal.

5- The Tribunal vide its judgment and award dated 23.4.2004 allowed the claim petition and directed the opposite party No.2, i.e. Regional Manager Roadways, who is respondent No.1 in the appeal to pay an amount of Rs. 52,000/-to the claimants as compensation.

6- Feeling aggrieved by the aforesaid judgment and award the claimants have preferred the appeal before this Court.

7- Heard the learned counsel for the parties and perused the record.

8- The first question to be considered in this case is – whether the accident took place on account of rash and negligent driving of the bus driver or on account of rash and negligent driving of Motorcycle Driver or it happened on account of contributory negligence of both drivers, i.e., Bus driver and the Motorcycle driver. The Tribunal has decided this issue by observing that the bus driver was not at all rash and negligent at the time of the accident and whatever the rash and negligence is there in causing this accident that too lies on the part of the Motorcycle driver.

9- On a careful consideration of the evidence on record, we come to the conclusion that the aforesaid finding recorded by the Tribunal is against the evidence and is not sustainable in the eye of law. P.W.2, Amit Verma is the eye witness produced by the claimants, who has deposed that as soon as the Motorcycle on which Devendra Rana was sitting, reached near Chandramani Chowk, Gaurav Pant who was driving the Motorcycle, indicated by his hand for crossing the road and the Motorcycle driver thereafter crossed the road. When the Motorcycle driver was to cross the road finally, Bus No. U.P. 07-J-9446 which was coming from the side of Saharanpur in a rash and negligent manner, hit the Motorcycle from behind. This witness has also stated that Devendra Rana was dragged by the tyre of the bus and Gaurav Pant along with Motorcycle fell down on the Kachacha side of the road. The evidence of this witness also shows that he was following the Motorcycle on his scooter at the time of the accident. This witness is a classmate of Devendra Rana and he has stated that on the date

of the accident he had gone to the house of one Deepak Tyagi for taking his subjects notes. Nothing has come out in the evidence on record which may indicate that this witness is telling lie or his presence could be treated to be doubtful at the place of the accident.

10- Further, P.W.3 is Gaurav Pant and this witness was driving the Motorcycle at the time of the accident. This witness has stated that on the date of the accident, he along with Devendra Rana were coming from the house of one Deepak Tyagi after taking subjects notes. This witness was driving the Motorcycle and Devendra Rana was a pillion rider. This witness has further deposed that as soon as his Motorcycle reached near Chandramani Chowk, he had to cross the road and when the Motorcycle had virtually crossed the road, a bus No. U.P. 07-J- 9446 coming from side of Saharanpur dashed the Motorcycle from behind, due to which he alongwith Motorcycle fell on Kachacha side of road and Devendra Rana sustained injuries and he ultimately died on account of those injuries. It is therefore quite clear from the evidence of the eyewitnesses produced by the claimants that the offending bus dashed the Motorcycle from behind. Therefore, it cannot be inferred in any way that the driver of the offending bus was not rash and negligent in causing this accident. The finding of the Tribunal to this effect that the driver of the bus was not rash and negligent is perverse and against the evidence on record. It is gathered from the evidence on record that the place where the accident took place is a heavily crowded place, therefore it was the primary duty of the bus driver to have carefully driven the bus at the crowded place. The manner in which the accident has taken place clearly indicates that it was the rash and negligence on the part of the bus driver which resulted this accident.

11- As far as the rash and negligence on the part of the Motorcycle driver is concerned, it is also clear that the Motorcycle driver is also rash and negligent in causing this accident upto some extent. It is true that the bus dashed the Motorcycle from behind but the evidence reveals that the Motorcycle was crossing the road

at the time of the accident. The driver of the Motorcycle might have seen the road both the sides before crossing it. It has come in the evidence that driver of the Motorcycle Gaurav Pant gave an indication for crossing the road by hand and thereafter he crossed the road but while crossing the road it is the duty of the Motorcycle driver also to see and watch the road as to whether any vehicle is coming from either side on that road or not. It has come in the evidence that when the Motorcycle had virtually crossed the road, the offending bus had dashed the Motorcycle from behind, therefore, this fact cannot be ignored that when the Motorcycle driver had attempted to cross the road, he must have seen the offending bus coming from the side of Saharanpur. There is nothing on record which may suggest that at this Chandramani Tiraha there is a blind bend and the Motorcycle driver was not in a position to see the bus coming from the side of Saharanpur. It is therefore clear from the evidence on record that the Motorcycle driver had sufficient time to see the offending bus coming on the road from the side of Saharanpur. Had the driver of the Motorcycle been vigilant, he could have avoided the accident. Therefore, the manner in which the Motorcycle had crossed the road without waiting for giving a pass to the bus coming from the side of Saharanpur, clearly indicates that the Motorcycle driver was also rash and negligent.

12- It is, therefore, quite clear from the evidence on record that this accident has been caused on account of rash and negligent driving of both the vehicles involved in the accident, i.e., bus and the Motorcycle.

13- As far as the ratio of the rash and negligence of the drivers of the vehicles involved in the accident is concerned, the evidence reveal that the driver of the bus was rash and negligent upto greater extent. The driver of the bus was plying a bigger vehicle on the road and the vehicle was certainly passing through a heavily crowded place at the time of the accident therefore it was the duty of the driver of the bus to carefully drive the vehicle at the place of the accident. The manner in which the accident has taken place shows that the driver of the bus was not vigilant otherwise he

would not have dashed the Motorcycle from behind. At the same time we have also observed that the driver of the Motorcycle was also rash and negligent but the rash and negligence on the part of the Motorcycle driver is upto lesser extent. We are of the opinion that in this accident the ratio of rash and negligence on the part of the drivers is 70% and 30%, i.e., 70% on the part of bus driver and 30% on the part of the Motorcycle driver.

14- The insurer, the owner as well as the driver of the Motorcycle have not been arrayed as opposite parties in the claim petition, therefore, the claimants/appellants will not be entitled to get the amount of compensation from the owner, driver and insurer of the Motorcycle. However it is to be seen that what would be the amount of compensation to be awarded in favour of the claimants, keeping in view the income, age and dependency of the deceased.

15- The evidence on record shows that the deceased was aged about 20 years at the time of the accident and he was doing his B.C.A. from an Institute named Graphic era. It has been alleged in the claim petition that the deceased was giving the tuitions and was also engaged in some private job out of which he had been earning an amount of Rs. 3,000/- per month. But there is no cogent and reliable evidence in order to show the income of the deceased. It is also not the case of the claimants that the deceased was the only son. The claimants/appellants although have produced P.W.4, Rajeev Kumar Saluja in order to show that the deceased had been working his shop and was being paid Rs. 2,000/- per month, but this witness could not produce any register or document in order to show as to whether the deceased had been actually working in his shop or not. Therefore, there is no cogent and reliable evidence adduced by the claimants/appellants in order to establish the income of the deceased.

16- In the absence of the evidence of income of the deceased the notional income, in view of the provisions of Section 163-A of the Motor Vehicle Act will have to be taken into consideration thus the notional income of the deceased comes to Rs. 10,000/- per year after due deductions. The deceased was aged about 20 years at

the time of the accident, therefore the multiplier of 16 would be applicable in this case and after adopting the multiplier of 16, the total amount of compensation comes to Rs. 10,000/- x 16 = Rs. 1,60,000/-.

17- We have already recorded the finding that the rash and negligence on the part of the bus driver is upto an extent of 70%. Therefore, after calculation the amount of compensation comes to Rs. 1,12,000/-, which can be awarded in favour of the claimants/appellants. We have already concluded that the driver, owner and insurer of the Motorcycle have not been arrayed as opposite party and the claimants/appellants have not claimed any compensation from them, therefore, the claimants would not be entitled to get any amount of compensation upto remaining extent of 30% from the owner, driver and insurer of the Motorcycle.

18- On the basis of the assessment of the evidence on record, we come to the conclusion that this appeal is liable to be allowed and the impugned judgment and award dated 23-4-2004 passed by the Tribunal, deserves to be set aside.

19- We hold that the claimants/appellants are entitled to get an amount of Rs. 1,12,000/- as compensation from the respondents along with an interest @ 6% per annum from the date of filing the petition till the date of actual payment.

20- The appeal is accordingly allowed. The impugned judgment and award dated 23-4-2004 passed by the M.A.C.T./Addl. District Judge/ V F.T.C., Dehradun, is set aside. The respondent No.1, Regional Manager, Gramin Depot, and S.R.T.C. Dehradun, Uttaranchal is directed to pay the amount of compensation awarded in favour of the claimants/appellants within a period of 45 days.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB